SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V. SEETHAPATHY
WRIT APPEAL NO. 925 OF 2006

BETWEEN

Mohd Shoaib Ali

.....Appellant

And

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Health Medical, Family Welfare (E1) Department,
Hyderabad & others.

.....Respondents

Counsel for the appellant : Shri K.S. Murthy

Counsel for respondent Nos.1 & 4 : Government Pleader for Medical Health and Family Welfare

Counsel for respondent No.2 : Shri D.V. Nagarjuna Babu

Dated: 13.09.2006

::JUDGMENT::

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 30.08.2006 passed by the learned Single Judge in Writ Petition No.16251 of 2006 whereby he refused to nullify the decision of the management of the Deccan College of Medical Sciences, Kanchanbagh, Hyderabad (respondent No.3) not to entertain the appellant's candidature for admission to M.B.B.S. course.

The facts:

After completing intermediate, the appellant appeared in EAMCET – 2006 conducted by N.T.R. University of Health Sciences (for short 'the University'). He secured 1370 rank in the medical stream. He sought and was granted admission in Government Dental College, Hyderabad. After some time, he applied for admission in M.B.B.S. in Shadan Institute of Medical Sciences, Hyderabad. He appeared for counselling held on 27.07.2006. He was admitted to M.B.B.S. course but he did not avail of the same.

In the meanwhile, management of respondent No.3 issued advertisement dated 21-07-2006 for admission of eligible candidates belonging to Muslim minority in M.B.B.S. course. In para 3 of the advertisement, it was specifically mentioned that counselling for admission will be held on 28.07.2006 at 11.00 a.m. onwards and the candidates should bring all the required original certificates without fail and that no candidate will be allowed to appear for counselling without the original certificates.

In response to the aforementioned advertisement, the appellant applied for consideration of his candidature for admission in M.B.B.S. He appeared in the counseling held on 28.07.2006, but his candidature was not considered because he failed to produce original certificates as per the requirement of Rule 6(a)(v)(a) of the Andhra Pradesh Un-aided Minority Professional Institutions (Regulation of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2006 (for short 'the 2006 Rules') framed by the State Government in exercise of the powers vested in it under Sections 3 and 15 of the

Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983.

The writ petition filed by the appellant questioning the action of the management of respondent No.3 not to entertain the candidature for admission to M.B.B.S. course was dismissed by the learned Single Judge on the ground that he had failed to comply with the mandate of Rule 6(a)(v)(a) of the 2006 Rules.

Shri K.S. Murthy, learned counsel for the appellant made strenuous efforts to convince us that rejection of his client's candidature by the management of respondent No.3 is wholly arbitrary and unjustified, by arguing that the atmosphere of uncertainty which prevails in the gamut of admissions impelled his client not to take the risk of surrendering admission to the B.D.S. course and he should not be penalized only on the ground of

non-compliance of the provision contained in clause (a) of Rule 6(a)(v) of the 2006 Rules. Learned counsel emphasized that the genuineness of the photostat copy of the documents produced by the appellant could not have been doubted by the management of respondent No.3 because he had been duly admitted in the B.D.S. course in the Government Dental College. Shri Murthy further argued that denial of admission to the appellant in the M.B.B.S. course would result in violation of fundamental right of equality guaranteed in Article 14 of the Constitution, and therefore, a direction may be issued to respondent No.3 to entertain his candidature and admit him to M.B.B.S. course.

We have considered the submission of the learned counsel, but have not felt persuaded to interfere with order under challenge or the decision of the management of respondent No.3 not to entertain his candidature for admission to M.B.B.S. course.

Rule 6 (a)(i) to (v) of the 2006 Rules which has bearing on the decision of this appeal read as under:

"6. Procedure for Admissions:

(a) To fill up EAMCET based Management seats:

(A – category 70% of the sanctioned intake of the seats)

(i) A Committee for admission shall be constituted by the Management of Minority Institution under these rules.

(ii) The Committee will make advertisements calling for single application form in the prescribed proforma from the eligible candidates who have been assigned ranking in the Common Entrance Test, desirous of seeking admission in Private un-aided Minority colleges to be filled in respect of the EAMCET based Management seats.

(iii) The candidates who are qualified to seek admission as a consequence of obtaining ranking in the Common Entrance Test and desires of seeking admission into the Unaided Minority Professional Institutions shall make application to the Management of the Minority Institution enclosing all the relevant document including a copy of rank card issued. The application shall be acknowledged.

(iv) The Management of the Minority Institutions shall scrutinize all the applications received from the candidates, after such scrutiny the Management of the Minority Institutions shall prepare the following merit list namely:

(a) Merit list containing the names of the concerned minority candidates arranged in the order of merit ranking assigned to them in the Common Entrance Test.

(b) In case of same rank being obtained by moré than one candidate, the marks obtained in Physics, Chemistry, Botany and Zoology shall be reckoned.

(c) In case of a further tie, the older candidate shall be given the higher place in the merit list.

(v) Candidates will be called for an interview in the order of merit for selection and allotment of seat in course and institution:

(a) All the candidates called for interview shall submit the specified original documents along with one set of duly attested photocopies and the Committee for admissions shall be entitled to cause verification of all the documents produced by the candidates.

(b) Mere appearance at the Entrance Test and obtaining high rank in the merit list does not entitle a candidate to be considered for admission automatically into any course/Institution unless he/she also satisfies the rules and regulations of admission prescribed by the Dr. NTR University of Health Sciences/Government including marks to be obtained in the qualifying examination etc.

(vi) Once a candidate secures admission to a particular college/Institution based on

his/her option, no further claim for admission into other college/institution, to any other kind of seat or any other course will be entertained, except as provided by the Committee for admission in the subsequent counseling, if any."

An analysis of the above reproduced rule shows that the Committee constituted by the management of minority institution is required to issue advertisement calling for single application form in the prescribed proforma from the eligible qualified candidates, who secure ranking in the Common Entrance Test. The candidates desirous of seeking admission in the minority institution have to fulfil the conditions laid down in the rules and produce the relevant documents. In terms of sub-clause (a) of Clause (v) of
Rule 6, a candidate is required to submit specified original documents along with a set of duly attested photostat copies.
Clause (vi) of Rule 6 (a) makes it clear that once a candidate gets admission in a particular college/institution as per his/her option, then he/she cannot claim admission into other college/institution except as provided by the Committee for admissions in the subsequent counselling.

The requirement of producing original documents was also incorporated in the advertisement dated 21-07-2006 issued by the management of respondent No.3 as is evident from Clause (3) thereof, which is produced below:

"3) The counselling for admission will be held on
28-07- 2006 at 11 a.m. onwards at the Admission Cell situated in the premises of Deccan College of Engineering & Technology, Darus-Salam, Aghapura, Hyderabad. The selection shall be made only among the candidates physically present themselves. Candidates are requested to bring all the required Original Certificates without fail. No candidates will be allowed to appear for counseling without the original certificates. The candidates shall be prepared for payment of fees as prescribed by the Govt./University at the time of counseling for admission."

Rule 6 (v)(a) is intended to enable the committee to scrutinize the documents of the candidate and satisfy itself about their genuineness. The requirement of producing original certificates has a salutary object namely to prevent the candidate from seeking admission on the basis of fake and fabricated records. It also ensures that after seeking admission in one course, the candidate does not go for more greener pasture and, thereby, create a situation where the seat earlier allotted to him go abegging or waste.

Since the appellant had not questioned the constitutionality and vires of the aforementioned rule and the learned Single Judge did not have the occasion to adjudicate on the same, we refrain from expressing any opinion on that issue.

On the merits of the case, we are convinced that the management of respondent No.3 did not commit any illegality by refusing to consider the appellant's candidature for admission to M.B.B.S. course because he failed to produce the original documents as per the requirement of Rule 6(a)(v)(a) and Clause-3 of the advertisement issued by respondent No.3. The submission of Shri K.S.Murthy that his client could not have taken the risk of surrendering admission in the B.D.S course because he was not certain about admission in M.B.B.S. course sounds attractive but, on a deeper consideration, we have not felt persuaded to accept the same. As per his own showing, the appellant's ranking among the minority candidates was 47 and as many as 77 seats in M.B.B.S. course were available in respondent No.3. Therefore, the appellant will be presumed to be sure and certain about his admission in M.B.B.S. course. If he was serious in securing admission in M.B.B.S. course, he could have surrendered admission in B.D.S. course and made an application to the concerned authorities to return the original documents. However, the fact of the matter is that he did not adopt the normal course available to him for securing admission in the M.B.B.S. course. Instead, he wanted to ride two horses by retaining admission in B.D.S. and at the same time seeking admission in M.B.B.S. course. The natural consequence of this was that he could not get admission in M.B.B.S. on account of non-production of original certificates.

There is another strong reason for our disinclination to entertain the appellant's plea. As per the averments contained in para 12 of the counter-affidavit filed on behalf of respondent No.3, all the vacant seats have been filled. Therefore, any direction by the Court at this stage will necessarily result in depriving one of the eligible candidates of his admission in the M.B.B.S. course. That candidate was not

impleaded as a party to the writ petition and without giving notice and opportunity of hearing, we do not intend to pass any order which would adversely affect the candidature of the unknown person.

No other point has been argued.

In view of the above discussion, we hold that the learned single Judge did not commit any error by refusing to entertain the appellant's prayer for issue of a direction to respondent No.3 to entertain his candidature for admission to M.B.B.S. course and we do not find any valid ground to take a different view.

In the result, the appeal is dismissed.

As a sequel to dismissal of the writ appeal, W.A.M.P.No.1951 of 2006 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

13-09-2006

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